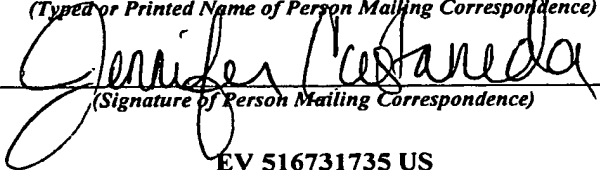


CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10) Applicant(s): Livesay, et al.			Docket No. Wellogix-002:CIP	
Application No. 09/801,016	Filing Date March 6, 2001	Examiner Ella Colbert	Customer No. 021897	Group Art Unit 3694
Invention: Method and Process for Providing Relevant Data, Comparing Proposal Alternatives, and Reconciling Proposals, Invoices, and Purchase Orders with Actual Costs in a Workflow Process				
I, <u> </u> , hereby certify that the following correspondence:				
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<u>April 11, 2008</u> <i>(Date)</i>				
<u>Jennifer Castaneda</u> <i>(Typed or Printed Name of Person Mailing Correspondence)</i>				
 <i>(Signature of Person Mailing Correspondence)</i>				
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APR 11 2008

TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
Wellogix-002:CIP

In Re: Application Of: Livesay, et al.

MAY 22 2008

Application No.
09/801,016

Filing Date
March 6, 2001

Examiner
Ella Colbert

Customer No.
021897

Group Art Unit
3694

Confirmation No.
1305

Title:

Method and Process for Providing Relevant Data, Comparing Proposal Alternatives, and Reconciling Proposals, Invoices, and Purchase Orders with Actual Costs in a Workflow Process

COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Return Postcard;
Check No. 23064 in the amount of \$120.00 (for filing Petition for Extension of Time);
Certificate of Express Mailing (EV 516731735 US);
Combined Amendment Transmittal and Petition for Extension of Time; and
Amendment After Final Rejection with Status of Claims.

in the above identified application.

- ☐ No additional fee is required.
- ☒ A check in the amount of \$120.00 is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. 13-2166 as described below.
- ☐ Charge the amount of
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.

- ☐ Payment by credit card. Form PTO-2038 is attached.

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Dated: April 11, 2008

Signature

William E. Johnson, Jr.
Reg. No. 22,719
The Matthews Firm (Customer No. 021897)
2000 Bering Drive, Suite 700
Houston, Texas 77057
US
713-355-4200 Telephone
713-355-9689 Facsimile

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4-17-08

175 AH

COMBINED AMENDMENT & PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) (Large Entity)

Docket No. Wellogix-002:CIP

In Re Application Of: Livesay, et al.

MAY 22 2008

APR 11 2008

Application No. 09/801,016

Filing Date March 6, 2001

Examiner Ella Colbert

Customer No. 021897

Group Art Unit 3694

Confirmation No. 1305

Invention:

Method and Process for Providing Relevant Data, Comparing Proposal Alternatives, and Reconciling Proposals, Invoices, and Purchase Orders with Actual Costs in a Workflow Process

COMMISSIONER FOR PATENTS:

This is a combined amendment and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of December 13, 2007 in the above-identified application.

The requested extension is as follows (check time period desired):

[X] One month [] Two months [] Three months [] Four months [] Five months

from: March 13, 2008 until: April 14, 2008

The fee for the amendment and extension of time has been calculated as shown below:

CLAIMS AS AMENDED

Table with 6 columns: CLAIMS REMAINING AFTER AMENDMENT, HIGHEST # PREV. PAID FOR, NUMBER EXTRA CLAIMS PRESENT, RATE, ADDITIONAL FEE. Rows include TOTAL CLAIMS, INDEP. CLAIMS, FEE FOR AMENDMENT, FEE FOR EXTENSION OF TIME, and TOTAL FEE FOR AMENDMENT AND EXTENSION OF TIME.

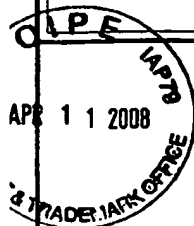
04/14/2008 WABDELRI 00000034 09801016

01 FC:1251

120.00 OP

**COMBINED AMENDMENT & PETITION FOR EXTENSION OF
TIME UNDER 37 CFR 1.136(a) (Large Entity)**

Docket No.
Wellogix-002:CIP



The fee for the amendment and extension of time is to be paid as follows:

- ☒ A check in the amount of **\$120.00** for the amendment and extension of time is enclosed.
- ☐ Please charge Deposit Account No. _____ in the amount of _____
- ☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **13-2166**
 - ☒ Any additional filing fees required under 37 C.F.R. 1.16.
 - ☒ Any patent application processing fees under 37 CFR 1.17.
- ☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **13-2166**
- ☐ Payment by credit card. Form PTO-2038 is attached.

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A handwritten signature in black ink, appearing to be "William E. Johnson, Jr.", written over a horizontal line.

Signature

William E. Johnson, Jr.
Reg. No. 22,719
The Matthews Firm (Customer No. 021897)
2000 Bering Drive, Suite 700
Houston, Texas 77057
US
713-355-4200 Telephone
713-355-9689 Facsimile

Dated: **April 11, 2008**

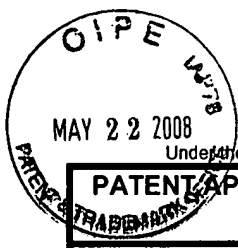
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**PATENT APPLICATION FEE DETERMINATION RECORD**

Substitute for Form PTO-875

Application or Docket Number

09/801,016

Filing Date

03/06/2001

☐ To be Mailed**APPLICATION AS FILED – PART I****OTHER THAN**

(Column 1)

(Column 2)

SMALL ENTITY ☐

OR

SMALL ENTITY

FOR	NUMBER FILED	NUMBER EXTRA	RATE (\$)	FEE (\$)	RATE (\$)	FEE (\$)
<input type="checkbox"/> BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A		N/A	
<input type="checkbox"/> SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A	N/A		N/A	
<input type="checkbox"/> EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A		N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X \$ =		X \$ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X \$ =		X \$ =	
<input type="checkbox"/> APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).					
<input type="checkbox"/> MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))						
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL		TOTAL	

APPLICATION AS AMENDED – PART II

(Column 1)

(Column 2)

(Column 3)

SMALL ENTITY

OR

OTHER THAN

SMALL ENTITY

AMENDMENT	04/11/2008	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE (\$)	ADDITIONAL FEE (\$)	RATE (\$)	ADDITIONAL FEE (\$)
	Total (37 CFR 1.16(i))	* 13	Minus	** 130	= 0	X \$ =		OR X \$50=	0
	Independent (37 CFR 1.16(h))	* 4	Minus	***4	= 0	X \$ =		OR X \$210=	0
	<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))							OR	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))								OR	
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE
									0

(Column 1)

(Column 2)

(Column 3)

AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE (\$)	ADDITIONAL FEE (\$)	RATE (\$)	ADDITIONAL FEE (\$)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X \$ =		OR X \$ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X \$ =		OR X \$ =	
	<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))							OR	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))								OR	
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:

/DANTE r. SMITH/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10)

Applicant(s): Jeffrey A. Livesay

Docket No.

Wellogix-002/CIP

Application No.

09/801,016

Filing Date

6 March 2001

Examiner

Ella Colbert

Customer No.

021897

Group Art Unit

3694

Invention:

Method and process for providing relevant data, comparing proposal alternatives, and reconciling proposals, invoices, and purchase orders with actual costs in a workflow process

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Transmittal Letter (General - Patent Pending), and all documents referenced therein.

(Identify type of correspondence)

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5 May 2008

(Date)

Dean C. Brehm

(Typed or Printed Name of Person Mailing Correspondence)

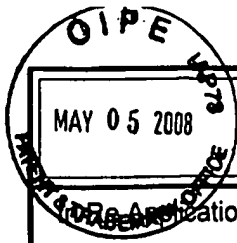
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EV 516732846 US

("Express Mail" Mailing Label Number)

EV516732846US

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HF/ BK

**TRANSMITTAL LETTER
(General - Patent Pending)**Docket No.
Wellogix-002/CIP

Application Of: Jeffrey A. Livesay

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/801,016	6 March 2001	Ella Colbert	021897	3694	1305

Title: Method and process for providing relevant data, comparing proposal alternatives, and reconciling proposals, invoices, and purchase orders with actual costs in a workflow process

COMMISSIONER FOR PATENTS:

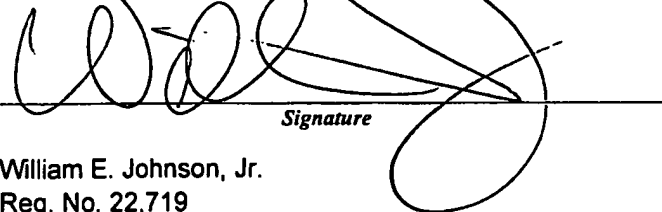
Transmitted herewith is:

Return Postcard;
Check No. 1450, in the amount of \$340.00 (2nd Month Extension of Time Fees);
Substitute Claims and Remarks; and
Copy of the Office Action dated December 13, 2007.

in the above identified application.

- ☐ No additional fee is required.
- ☒ A check in the amount of \$340.00 is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. 13-2166 as described below.
- ☐ Charge the amount of
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.
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Signature

Dated: 5 May 2008

William E. Johnson, Jr.
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2000 Bering Drive, Suite 700
Houston, Texas 77057
US
713-355-4200 Telephone
713-355-9689 Facsimile

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(Date)

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

cc:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

~~~~~

ART UNIT: 3694

### **SUBSTITUTE CLAIMS AND REMARKS**

**Dear Sir:**

Consistent with the agreements and suggestions of Examiner Colbert, the following substitute claims are hereby submitted in a condition believed to be ready for allowance.

340.00 OP

**Please amend the claims as indicated in the enclosed Status Of Claims.**



## **STATUS OF CLAIMS**

1. (Currently Amended) A procurement process for reconciling actual performance data with estimated data within said procurement process for a complex project ordered by a buyer and performed by a seller, the method comprising:

obtaining and storing in the procurement process the estimated data from any source relating to the complex project;

receiving and storing in the procurement process the actual performance data from the seller via a communication network;

using electronic comparison circuitry in the procurement process to compare the actual performance data to the estimated data to determine any discrepancy between the actual performance data and the estimated data; and

sending, in the procurement process, an electronic notification of any such discrepancy to at least one of the buyer and the seller, and

wherein notification of any such discrepancy is provided to the seller thereafter  
~~causing the process to electronically notify the seller of any such discrepancy,~~ whereby the seller can reconcile or ~~otherwise~~ account to the buyer for any such discrepancy.

2. (Currently Amended) A procurement process for reconciling as described in claim 1, wherein the actual performance data comprises an actual cost, in whole or in part, of either goods or services, or goods and services provided by the seller in performance of the complex project.

3. (Currently Amended) A procurement process for reconciling as described in claim 1, wherein the actual performance data comprises an actual accounting, in whole or in part, of

either goods or services, or goods and services provided by the seller in performance of the complex project.

4. (Currently Amended) A procurement process for reconciling as described in claim 1, wherein the actual performance data comprises at least one measurement of at least one parameter defining at least one aspect of the complex project.

5-14. (Canceled).

15. (Currently Amended) A procurement process for reconciling as described in claim 1, wherein the procurement process generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the complex project, wherein the complex project is defined in terms of at least one parameter, and wherein the procurement process converts the at least one parameter into the at least one request, and wherein the procurement process system communicates the at least one request to the seller.

16-21. (Canceled).

22. (Currently Amended) A procurement system for reconciling actual performance data compiled for a complex project by a seller with estimated data for the project, the complex project ordered by a buyer and performed by the seller, the procurement system comprising:

- a first interface for interacting with at least one buyer;
- a second interface for interacting with at least one seller;
- a memory for storing the estimated data and the actual performance data, wherein the

actual performance data is received from the seller via the second interface; and

a processor controlling the memory, the first interface and the second interface, wherein the processor electronically compares the actual performance data to the estimated data to determine any discrepancy between the actual performance data and the estimated data and sends an electronic notification of any such discrepancy to at least one of the buyer and the seller, and wherein notification of any such discrepancy is provided to the seller, whereby the seller can reconcile or account to the buyer for any such discrepancy. ~~wherein the processor notifies the buyer and/or the seller via the first interface of any discrepancy.~~

23. (Currently Amended) A procurement system for reconciling as described in claim 22, wherein the actual performance data comprises an actual cost , in whole or in part, of either goods or services, or goods and services provided by the seller in performance of the complex project.

24. (Currently Amended) A procurement system for reconciling as described in claim 22, wherein the actual performance data comprises an actual quantity, in whole or in part, of either goods or services, or goods and services provided by the seller in performance of the complex project.

25. (Currently Amended) A procurement system for reconciling as described in claim 22, wherein the actual performance data comprises at least one measurement of at least one parameter defining at least one aspect of the complex project.

26-33. (Canceled).

34. (Currently Amended) A procurement system for reconciling as described in claim 22, wherein the system further comprises a system for implementing a process to generate at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the complex project, wherein the project is defined in terms of at least one parameter, and wherein the procurement system converts the at least one parameter into the at least one request, and wherein the procurement system communicates the at least one request to the seller.

35-50. (Canceled).

51. (Currently Amended) A procurement process in a system for comparing at least one first response to at least one second response, the at least one first response and at least one second response being responsive to at least one request by a buyer for either at least one good or at least one service, or at least one good and at least one service for a complex project, the procurement process comprising:

receiving the at least one first response in the system via a communication network;

receiving the at least one second response in the system via the communication network;

electronically comparing in the system the at least one first response to the at least one second response; and

~~presenting the electronic comparison to the buyer and/or the seller through an interface with a buyer system via the communication network,~~ sending an electronic notification of any discrepancy between the at least one first response and the at least one second response to at least one of the buyer and the seller wherein notification of any such discrepancy is provided

to the seller, whereby the seller can reconcile or ~~otherwise~~ account to the buyer based upon the electronic comparison.

52-53. (Canceled)

54. (Currently Amended) A procurement process in a system for comparing as described in claim 51, wherein the first response is provided by a first seller through an interface with a first seller system via the communication network, and the at least one second response is provided by at least one second seller through an interface with at least one second seller system via the communication network.

55-63. (Canceled).

64. (Currently Amended) A procurement system for comparing an at least one first response to at least one second response, the at least one first response and at least one second response being responsive to at least one request by a buyer for either at least one good or at least one service, or at least one good and at least one service for a complex project, the system comprising:

- a buyer interface;

- a seller interface for receiving the at least one first response and the at least one second response from a seller;

- a memory for storing the at least one first response and the at least one second response; and

- a processor connected to a buyer interface, a seller interface, and the memory, wherein the processor electronically compares the at least one first response to the at least one second

response, and wherein the processor presents the comparison to the buyer via the buyer interface.

65-130. (Canceled).

## **REMARKS**

The current amendment to the claims, as set forth in the enclosed Status of Claims, is believed to fully define the present invention. It should be appreciated that each of the claims 1-4, 15, 22-25, 34, 51, 54 and 64 has been currently amended. For example, each of these claims has been amended to call for the process or the system to be a procurement process or a procurement system. This amendment is being made to define its intended purpose, that of procuring goods or services by the buyer from a seller of such goods and services.

### **Section 101 Considerations**

In the Examiner interview, it was agreed that the changes discussed immediately below overcame the Examiner's Sec. 101 objections.

The word "procure" is a common English word having the dictionary meaning to obtain possession of goods or services. The expression "procurement process" is not new matter but is found throughout the Applicant's specification, for example in paragraph [0006], on page 4 of the specification. In paragraph [0008], on page 5 there is the language "to procure" with the definition of procurement merely being to procure. The language for "procuring" is also found in paragraph [0014] found on page 8 of the Applicant's specification. The term "procurement" is also found in paragraph [0019] found on page 11 of the Applicant's specification.

The Applicant's claims have been amended to reflect certain elements of the claims as being provided in an electronic medium. One of the principal definitions of the word "electronic" is defined as something done with computers. The Applicant's specification is replete with language indicating the preferred embodiment to involve the use of an electronic medium, such as using the internet in practicing the invention. The expression "electronically" is found on page 43, paragraph [0125] of the Applicant's specification.

By way of further example, the addition of the word "complex" to the word "project." The present invention is intended to provide a procurement process for use with the buying and selling of portions of a complex project. The expression "complex project" is not new matter and is found in paragraph [0091] on page 25 of the Applicant's specification. The expression "complex project" is also found on page 34, paragraph [0106]. Complex projects have a description in paragraph [0146] found on page 53 of the Applicant's specification. In addition to the oil and gas industries example, there is statement on page 55 of the Applicant's specification, paragraph [0149] which indicates that other types of complex projects are contemplated for use with the present invention so the present invention is not intended to be limited to goods or services provided in the drilling, completion and production of oil and gas.

By way of further example, the expression "actual data" has been amended to now be actual performance data. The expression "actual performance data" is not new matter but is described in depth commencing on line 1 of paragraph [0153] on page 56, carrying through the remainder of paragraph [0153] found on page 57.

#### **Section 102 and Section 103 Considerations**

With respect to any of the rejections made under 35 U.S.C. 102(a) as being anticipated by Primavera and PurchasePro.com, published by Business Wire on September 21, 1999, it should be appreciated that several individuals associated with PurchasePro were tried in the U.S. District Court in Alexandria on charges including stock fraud, conspiracy and witness tampering, and now prosecutors have added the charge of obstruction of justice in the cross examination of a government witness. As noticed in the 1999 publication, Primavera and Purchase Pro were partners in developing the software. The prosecution team has charged that the software product that supposedly facilitated business-to-business purchases over the Internet, was a failure. The write up on this matter is enclosed herewith as Exhibit A to this



Supplemental Amendment. Moreover, despite the fact the software program being touted by PurchasePro was a failure, it should be appreciated that this reference never once mentions this steps of storing estimated data, and then receiving actual performance data at or near the conclusion of a complex project. With respect to complex projects, the actual performance data and the estimated data are almost uniformly different, i.e. there is typically a discrepancy between the estimated data and the actual performance data. Because there is no indication of there being a discrepancy in the Primavera reference, there would have been no need to send notice to the buyer of the discrepancy between the estimated data and the actual performance data as set forth in the claims. Thus, although there is no veracity with respect to the 1999 publication of Primavera and PurchasePro, there is no teaching, disclosure or even a suggestion in this reference of a procurement process which comprises the steps of storing estimated data with the actual performance data and then electronically comparing the estimated data with the actual performance data and then sending the notice of discrepancy back to the buyer, which would then allow a reconciliation of such discrepancy.

As noted during our interview, the Primavera reference does not teach, suggest or even require the practice of the claimed invention. It does include a list of high level functions for business-to-business processing. It does not discuss or mention complex projects, cost estimates, signaling a process for reconciling invoices or the like, or accounting for actual performance data. The Primavera reference is aspirational in the sense that it describes a wish list of functions, but one could practice the hypothetical system described in the reference without the invention.

With respect to 35 U.S.C. 103, despite the fact the software program being touted by PurchasePro was a failure, it should be appreciated that this reference never once mentions the steps of storing estimated data, and then receiving actual performance data at the conclusion of a complex project. With respect to complex projects, the actual performance

data and the estimated data are almost uniformly different, i.e. there typically is a discrepancy between the estimated data and the actual performance data. Because there is no indication of there being a discrepancy in the Primavera reference, there would have been no need to send notice to the buyer or the seller of the discrepancy between the estimated data and the actual performance data as set forth in the claims. Thus, although there is no veracity with respect to the 1999 publication of Primavera and PurchasePro, there is no teaching, disclosure or even a suggestion in this reference of a procurement process which comprises the steps of storing estimated data, storing actual performance data and then electronically comparing the estimated data with the actual performance data and then sending the notice of discrepancy back to the buyer, which would then allow a reconciliation of such discrepancy. It is therefore respectfully submitted that the Primavera/PurchasePro document does not properly support the rejection of the claims under this reference based upon 35 U.S.C. 102 or 35 U.S.C. 103.

Claims 22-25, 34, 51, 54 and 64 have been rejected under 35 U.S.C. 103 based upon the Huberman '244 patent in view of the Wagner '201 patent. The Huberman '244 patent relates to the conduction of an auction in which a successful bidder at the auction has bid a set price for goods or services. This step is essentially what would happen before the present invention swings into action. With the present invention, once there has been a contract granted to a given party, whether it be based upon auction or otherwise, the process of the present invention begins. This is the basis for the compilation of actual performance data, which is indicative of various items such as actual costs and other expenses. All of this is done after one may have practiced the disclosure of the Huberman patent. The Huberman '244 patent never gets around to having actual performance data because there is no performance contemplated and therefore no need to account for discrepancies.

The Wagner '201 patent, likewise, relates only to a process involving the sales of

future commodity contracts and the matching of buyer orders with sale orders but there is no performance involved. There cannot be any actual performance data resulting from the Wagner '201 patent such as is called for in each of the claims.

Thus, the combination of the Huberman '244 patent and the Wagner '201 patent, either taken alone or in combination, fails to disclose, teach or even suggest the steps spelled out in each of the claims.

The cited references have no disclosure, teaching or even a suggestion of having any actual data relating to performance of a project. The references are non-related to any performance criteria.

The cited art neither anticipates the claims nor makes the claims obvious, whether amended or not.

There is enclosed a Request for an additional One (1) Month Extension of Time, which extends the time for response up to May 13, 2008. While the Applicant is of the opinion no additional extensions will be required, in the event, that an additional extension is required, please treat this as a request for an additional one (1) month extension, extending the time for response to June 13, 2008 and charge the extension fee against Applicant's Deposit Account No. 13-2166.

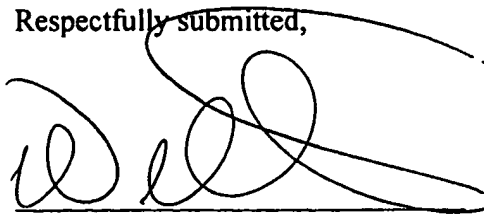
Again, the Applicants wish to express their appreciation for the interview granted to the Applicants. It is believed that each of the claims is now in prima facie condition for allowance, and the advancement of the application to issue is respectfully requested.

Should the Examiner be of the opinion that a further telephone conference with the undersigned attorney for the Applicants would expedite the advancement of the prosecution of this application, such a telephone conference would be welcomed by the undersigned attorney for the Applicants.

5/5/08

Date

Respectfully submitted,



William E. Johnson, Jr.

THE MATTHEWS FIRM (Customer #021897)

Reg. No. 22,719

2000 Bering Drive, Suite 700

Houston, Texas 77057

(713) 355-4200 Telephone

(713) 355-9689 Facsimile

SERIAL NO. 09/801,016

John Chisholm

From: John Chisholm  
Sent: Saturday, April 26, 2008 3:15 PM  
To: jhughes@bpblaw.com; Bob Fielding; Bo Bassett  
Subject: purchase pro info

## In New Trial, PurchasePro Founder Faces Additional Charge

By Matthew Barakat  
Associated Press  
Wednesday, October 10, 2007; Page D08

A former dot-com billionaire who allegedly cheated investors at his software company also tried to defraud a federal court at his trial last year by pushing his lawyer to introduce phony e-mails as evidence, prosecutors said yesterday.

Charles E. "Junior" Johnson, 46, whose now-defunct company PurchasePro became embroiled in an accounting scandal with AOL in 2001, headed to trial again in U.S. District Court in Alexandria on charges including stock fraud, conspiracy and witness tampering. Prosecutors added the charge of obstruction of justice, for allegedly urging his attorney to use fake e-mails in the cross-examination of a government witness.

Johnson was one of four executives, including two mid-level executives from AOL, who were tried last year for the alleged stock fraud. But during the trial, U.S. District Judge Walter D. Kelley Jr. declared a mistrial in Johnson's case.

Prosecutors did not reveal all the details of the alleged trial obstruction. Johnson's former lawyer, Preston Burton, is expected to testify for the government. He declined to comment.

In the first quarter of 2001, as the dot-com bubble was bursting, PurchasePro of Las Vegas was having a hard time selling its core product, a "marketplace license" that supposedly facilitated business-to-business purchases over the Internet.

PurchasePro had advised Wall Street that its revenue would increase significantly in the first quarter of 2001, even though its product was essentially a failure, prosecutor Timothy D. Belevetz said in his opening statement. PurchasePro relied heavily on a partnership with AOL to sell the licenses, and AOL resorted to secret side deals and sham accounting to unload the licenses on other businesses.

At last year's trial, PurchasePro executives testified that they concealed the fraud to make it appear that PurchasePro had met its sales goals in the first quarter of 2001.

Johnson, the company's largest stockholder, never sold his shares, even as the stock collapsed and became worthless. Johnson's attorney, Yale Galanter, said in his opening statement that Johnson's refusal to sell the stock when it was valuable proves he was not

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Charges against Charles E. Johnson include obstruction of justice. (Andrew Serban - Bloomberg News)

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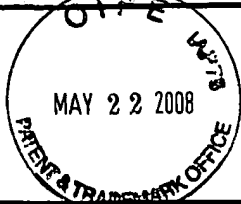
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4/28/2008





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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

09/801,016

03/06/2001

Jeffrey A. Livesay

Wellogix-002:CIP

1305

21897 7590 12/13/2007  
THE MATTHEWS FIRM  
2000 BERING DRIVE  
SUITE 700  
HOUSTON, TX 77057

EXAMINER

COLBERT, ELLA

ART UNIT

PAPER NUMBER

3694

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



# Office Action Summary

|                 |                |  |
|-----------------|----------------|--|
| Application No. | Applicant(s)   |  |
| 09/801,016      | LIVESAY ET AL. |  |
| Examiner        | Art Unit       |  |
| Ella Colbert    | 3694           |  |

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 22-25, 34, 51, 54 and 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 22-25, 34, 51, 54 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 14, 15, 22-25, 34, 51, 54, and 64 are pending. Claims 1, 15, 22-25, 34, 51, 54, and 64 have been amended in this communication filed 9/18/07 entered as Response After Non-Final Action and New or additional Drawings. Claim 65 has been cancelled.
2. The Objections to drawing fig's 8C, 9B, 16C-16L, 19A, 19D, and 19F have been overcome by Applicants' resubmission of the drawings and are hereby withdrawn.
3. The Objections to the Specification have been overcome by Applicants' submission of a substitute Specification and are hereby withdrawn.
4. The claim objections for claim 1 has been overcome by Applicants' amendment and are hereby withdrawn.
5. The 35 USC 112, second paragraph rejections for claims 1 and 51 still remain rejected as set forth here below. Claim 65 has been cancelled and therefore the rejection of claim 65 is moot.
5. The 35 USC 101, rejection still remains as set forth here below.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, is unclear and vague who or what and



whether it is a device or buyer (customer) obtaining the estimated data from any source, comparing actual data to the estimated data and notifying the seller of any discrepancy.

Claim 51, it is unclear and vague who or what is receiving "the at least one first response" and "the at least one second response", comparing the at least one first response" and "presenting the comparison to the buyer". Is the "buyer receiving the first response" and "the second response", "comparing the first response", or is the seller the one who is performing these steps or is some device performing the steps? Is it the seller or some device presenting the comparison to the buyer?

Claims 22 and 64 are clear as written because it is understood who and what is doing each step.

### ***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-4, 15, 22-25, 34, 51, 54, and 64 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Under the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, a claimed invention must satisfy the requirement that it be directed to a "practical application," which is to mean "the claimed invention physically transforms an article or physical object to a different state or thing, or ... the claimed invention otherwise produces a useful, concrete and tangible result". If a claim satisfies those questions, then the claim describes eligible subject matter.

In the instant case, the claimed invention does not physically transform an article or a physical object to a different state or thing since the claim is not directed to an article or physical object. Therefore, a relevant test to determine if the eligibility requirement is met is whether the claimed invention as a whole is limited to a useful concrete and tangible result.

The following definitions are used as guidelines in determining whether the claimed invention produces a useful, concrete and tangible result, as discussed in MPEP 2106 IV C (2).

Useful- must be specific, substantial and credible and specifically recited in the claim. If the claim is broad enough to not require a practical application, it must be rejected.

Tangible –must be some “real-world” result, not abstract.

Concrete –must have a result that can be substantially repeatable or the process must substantially produce the same result again.

Claim 1 recites the steps for obtaining estimated data from any source, receiving the actual data from the seller, comparing the actual data to the estimated data to determine a discrepancy between the actual and estimated data, and notifying the seller if there is a discrepancy with the seller accounting for the discrepancy. The method of obtaining estimated data and actual data and making a comparison and determining a discrepancy and accounting for the discrepancy is considered a manipulation of data and performs no concrete, useful or tangible result. Claims 22 and 51 have a similar problem.

Claims 2-4 and 15 inherit the limitations of the parent claim and are therefore rejected as addressed above for claim 1.

Claim 22 has a similar problem as addressed above for claim 1 because no result is achieved at the end of the process. The estimated and actual data and determining a discrepancy and accounting for the discrepancy does not produce a concrete, useful, or tangible result.

Claims 23-25 and 34 15 inherit the limitations of the parent claim and are therefore rejected as addressed above for claim 22.

Claim 51 has a similar problem as addressed above in independent claims 1 and 22.

Claim 54 inherits the limitations of the parent claim and are therefore rejected as addressed above for claim 51.

Claim 64 has a similar problem as addressed above for independent claims 1, 22, and 51.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by "Primavera and PurchasePro. Com" (Business Wire, 9/21/99).

Claim 1. "Primavera and PurchasePro. Com" discloses A process for reconciling actual data with estimated data within said process for a project ordered by a buyer and performed by a seller, the method comprising:

obtaining and storing the estimated data from any source relating to the project;

receiving and storing the actual data from the seller via a communication network;

comparing the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data; and causing the process to notifying the seller of any discrepancy, wherein upon notice of the discrepancy the seller can account for the discrepancy. Primavera and PurchasePro.com disclose obtaining the estimated data from different manufacturers for a construction project, receiving the actual data from a seller via the Internet (a communications network) (Page 1-Page 2, line 15); comparing the actual data to the estimated data for any discrepancy (page 2, lines 22-27) and notifying the seller of any discrepancy ..." (page 2, lines 28-35). It is considered inherent to notify the seller of any discrepancy and for the discrepancy to be accounted for by the seller.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 2-4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primavera and PurchasePro.com and (US 5,826,244) Huberman.

Claim 2. Primavera and PurchasePro.com failed to disclose, A process for reconciling as described in claim 1, wherein the actual data comprises an actual cost , in whole or in part, of either goods or services or goods and goods and services provided by the seller in performance of the project. Huberman discloses, A process for reconciling as described in claim 1, wherein the actual data comprises an actual cost ,

in whole or in part, of either goods or services or goods and goods and services provided by the seller in performance of the project (col. 11, lines 4-15).

Claim 3. Primavera and PurchasePro.com discloses, A process for reconciling as described in claim 1, wherein the actual data comprises an actual accounting un whole or in part of either goods or services, or goods and services provided by the seller in performance of the project (page 1, paragraph 8).

Claim 4. Primavera and PurchasePro.com failed to disclose, A process for reconciling as described in claim 1, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project. Huberman discloses A process for reconciling as described in claim 1, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project (col. 14, lines 4-30).

Claim 15. Primavera and PurchasePro.com failed to disclose A process for reconciling as described in claim 1, wherein the workflow process generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter. Huberman discloses, A process for reconciling as described in claim 1, wherein the workflow process generates at least one request for either at least one good or at least one service, or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter (col. 13, line 54-col. 14, line 46).

Primavera and PurchasePro.com discloses, wherein the system converts the at least one parameter into the at least one request, and wherein the system communicates the at least one request to the seller (page 2, paragraph 2 and paragraph 3, and paragraph 5-paragraph 7).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 22-25, 34, 51, 54, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,826,244) Huberman in view of (US 4,903,201) Wagner.

Claim 22. Huberman discloses, A system for reconciling actual data compiled for a project by a seller with estimated data for the project, the project ordered by a buyer and performed by the seller, the system comprising:  
a first interface for interacting with at least one buyer (col. 6, lines 5-19 and lines 44-56);  
a second interface for interacting with at least one seller (col. 5, line 59-col. 6, line 4 and col. 8, line 66-col. 9, line 23). Huberman failed to disclose, a memory for storing the estimated data and the actual data, wherein the actual data is received from the seller field device via the second interface; and a processor controlling the memory, the first interface and the second interface, wherein the processor compares the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data, and wherein the processor notifies the buyer via the first interface of any discrepancy. Wagner discloses, a memory for storing the estimated data and the actual data, wherein the actual data is received from the seller field device via the second interface; and a processor controlling the memory, the first interface and the second interface, wherein the processor compares the actual data to the estimated data to determine any discrepancy between the actual data and the estimated data, and wherein the processor notifies the buyer via the first interface of any discrepancy (col. 9, line 50-col. 10, line 67). It would have been obvious to one having ordinary skill in the



art at the time the invention was made to incorporate the teachings of Wagner in Huberman because such an incorporation would allow Huberman to have an accounting process with the components of a system for an accurate business environment.

Claim 23. Huberman discloses, A system for reconciling as described in claim 22 wherein the actual data comprises an actual cost in whole or in part, of either goods or services or goods and services provided by the seller in performance of the project (col. 12, line 10-43).

Claim 24. Huberman discloses, A system for reconciling as described in claim 22 wherein the actual data comprises an actual quantity in whole or in part, of either goods or services or goods and services provided by the seller in performance of the project (col. 13, line 54-col. 14, line 30).

Claim 25. Huberman discloses, A system for reconciling as described in claim 22, wherein the actual data comprises at least one measurement of at least one parameter defining at least one aspect of the project (col. 14, lines 31-46).

Claim 34. Huberman discloses, A system for reconciling as described in claim 22 wherein the system further comprises a system for implementing a process to generate at least one request for either at least one good or at least one service or at least one good and at least one service to be provided by the seller to the buyer for the project, wherein the project is defined in terms of at least one parameter, and wherein the system converts the at least one parameter into the at least one request', and

wherein the system communicates the at least one request to the seller (col. 9, lines 24-53, col. 11, lines 4-15, col. 13, line 40-col. 14, line 30, and col. 18, line 23).

Claim 51. Huberman discloses, A process in a system for comparing a first response to at least one second response, the first and at least one second responses responsive to at least one request by a buyer for at least one good/service for a project, the process comprising: receiving the first response at the workflow system via a communication network (col. 3, line 59-col. 4, line 30); receiving the at least one second response at the workflow system via the communication network (col. 4, lines 31-44); comparing the first response to the at least one second response (col. 4, line 45-col. 5, line 32); and presenting the comparison to the buyer through an interface with a buyer system via the communication network (col. 8, line 66-col. 9, line 53 and col. 10, lines 6-35). This independent claim is also rejected for the similar rationale as given above for claim 22.

Claim 54. Huberman discloses, A process in a system for comparing as described in claim 51, wherein the first response is provided by a first seller through an interface with a first seller system via the communication network, and the at least one second response is provided by at least one second seller through an interface with at least one second seller system via the communication network (col. 12, line 44-col. 13, line 38).

Claim 64. Huberman discloses, A system for comparing a first response to at least one second response, the first and at least one second responses responsive to at

least one request by a buyer for either at least one good or service, or at least one good and at least one service for a project, the workflow system comprising:  
a buyer interface (col. 10, lines 22-35 and line 62-col.11, line 15); at least one seller interface for receiving the first response and the at least one second response from at least one seller (col. 9, lines 2-23 and col. 10, lines 6-21). This independent claim is rejected for the similar rationale as given above for claim 22.

***Response to Arguments***

15. Applicant's arguments filed 9/18/07 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' Argue: The steps of claims 1, 22, 51, and 64 do not involve the mere manipulation of data and they are concrete, useful, and have a tangible result has been considered but is not persuasive. Response: Applicants' are not understanding that the claim limitations do not have a result. The estimated data is obtained and stored, then the actual data is received, stored, and compared to the estimated data, and then the process notifies the seller of any discrepancy. There is not any concrete, useful, and tangible result achieved by these steps. Where is the result after these steps occur?

Issue no. 2: Applicants' argue: There is no teaching or even suggestion of obtaining and storing estimated data, receiving and storing actual data, comparing the actual data with the estimated data and notifying the seller of any discrepancy between the actual data, allowing the seller to account for any discrepancy has been considered but is not persuasive. Response: The Examiner has outlined in the pages and line

numbers along with inherency where the claim limitations of claim 1 are found in "Primavera and Purchase Pro. Com".

Issue no. 3: Applicants' argue: The Huberman '244 and the Wagner '201 references are non-analogous art and are silent as to the steps of storing estimating data, storing actual data, comparing the estimated data with the actual data, and notifying the buyer of any discrepancy, and notifying the buyer of any discrepancy has been considered but is not persuasive. Response: Huberman '244 patent and the Wagner '201 patent were not used to reject these claim limitations.

Issue no. 4: Applicants' argue: The Huberman and the Wagner patents, either taken alone or in combination fail to disclose, teach or even suggest the steps spelled out in claims 22-25, 34, 51, and 64 have been considered but are not persuasive. Response: In this case Huberman is interpreted as disclosing the actual data comprising an actual cost of either goods or services ... in col. 11, lines 4-15, the actual data comprises a measurement of a parameter ... in col. 14, lines 4-30, generating a request for either one good or one service ... with the project being defined in terms of at least one parameter in col. 13, line 54-col. 14, line 46 and the other missing limitations are interpreted as being taught by Wagner.

**Conclusion:** *Although the Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action, the specified citations are merely representative of the teachings in the art as applied to the specific limitations within the individual claim. Since other passages and figures may apply to the claimed invention as well, it is respectfully requested that the Applicant(s), in preparing the response, to consider fully the entire references as potentially teaching all of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the Examiner.*

The Applicant is respectfully requested to point out to the Examiner in the independent claim(s) the inventive concept of the invention.

The Examiner is entitled to give limitations their broadest reasonable interpretation in light of the Specification (see below):

2111            Claim Interpretation; Broadest Reasonable Interpretation [R-1]

**>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION**

*During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541, 550-51 (CCPA 1969).<*

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Inquiries**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
09/801,016  
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December 9, 2007

  
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**TO: Examiner Ella Colbert**

**FAX NUMBER: 571-273-6741**

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